

CLOSED,CV,PROTO

**U.S. District Court
U.S. District of Minnesota (DMN)
CIVIL DOCKET FOR CASE #: 0:11-cv-01520-DWF-JSM**

Keten et al v. Does 1-15 et al
Assigned to: Judge Donovan W. Frank
Referred to: Magistrate Judge Janie S. Mayeron
Cause: 42:1983 Civil Rights Act

Date Filed: 06/09/2011
Date Terminated: 05/13/2013
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff**James Keten***individually and o/b/o minor child K.K.K.*represented by **Andrew M. Irlbeck**

Andrew M. Irlbeck
332 Minnesota St., Ste W-1610
St. Paul, MN 55101
651-366-6909
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Email: andrew.irlbeck.esq@gmail.com
ATTORNEY TO BE NOTICED

Paul Applebaum

332 Minnesota St Ste W1610
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ATTORNEY TO BE NOTICED

Sarah Henning

332 Minnesota St Ste W1610
St Paul, MN 55101
612-701-0996
Email: sarah@sahenninglaw.com
TERMINATED: 05/31/2012
ATTORNEY TO BE NOTICED

Plaintiff**Aisha Keten***individually and o/b/o minor child K.K.K.*represented by **Andrew M. Irlbeck**

(See above for address)
ATTORNEY TO BE NOTICED

Paul Applebaum

(See above for address)
ATTORNEY TO BE NOTICED

Sarah Henning

(See above for address)

TERMINATED: 05/31/2012
ATTORNEY TO BE NOTICED

V.

Defendant

John Does 1-15

*in their individual and official capacities,
as Police Officers for the City of
Minneapolis
TERMINATED: 11/14/2011*

represented by **Sara J Lathrop**
Minneapolis City Attorney's Office
350 S 5th St Rm 210
Mpls, MN 55415
612-673-2072
Fax: 612-673-3362
Email: sara.lathrop@ci.minneapolis.mn.us
ATTORNEY TO BE NOTICED

Timothy S Skarda

Minneapolis City Attorney's Office
350 South 5th Street, Room 210
Mpls, MN 55415
612-673-2553
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Email:
Timothy.Skarda@ci.minneapolis.mn.us
ATTORNEY TO BE NOTICED

Defendant

Minneapolis, The City of

represented by **Andrea Kloehn Naef**
Minneapolis City Attorney's Office
350 S 5th St Rm 210
Mpls, MN 55415
612-673-2429
Email: Andrea.Naef@minneapolismn.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara J Lathrop

(See above for address)
ATTORNEY TO BE NOTICED

Timothy S Skarda

(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Sergeant Steven Mosey

*in his individual and official capacity
TERMINATED: 04/04/2013*

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara J Lathrop

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Sergeant Mark Osland
in his individual and official capacity
TERMINATED: 11/27/2012

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
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Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Sergeant Kendal Chambers
in his individual and official capacity
TERMINATED: 11/27/2012

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Aaron Morrison
in his individual and official capacity
TERMINATED: 04/04/2013

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
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Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda

(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Chad Fuchs
in his individual and official capacity
TERMINATED: 04/04/2013

represented by **Andrea Kloehn Naef**
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LEAD ATTORNEY
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Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Steven Lynch
in his individual and official capacity
TERMINATED: 04/04/2013

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
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Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Todd Babekuhl
in his individual and official capacity
TERMINATED: 11/27/2012

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
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Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Lucas Peterson
in his individual and official capacity
TERMINATED: 11/27/2012

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
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Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Scott Creighton
in his individual and official capacity
TERMINATED: 11/27/2012

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Chris Garbisch
in his individual and official capacity
TERMINATED: 04/04/2013

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Nick Rowe
in his individual and official capacity
TERMINATED: 11/27/2012

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Mark Kaspszak
in his individual and official capacity
TERMINATED: 11/27/2012

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Joshua Rick
in his individual and official capacity
TERMINATED: 11/27/2012

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Peter Rud
in his individual and official capacity
TERMINATED: 11/27/2012

represented by **Andrea Kloehn Naef**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara J Lathrop
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
 (See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer George Peltz
in his individual and official capacity
TERMINATED: 04/04/2013

represented by **Andrea Kloehn Naef**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara J Lathrop
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
 (See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Mark Beaupre
in his individual and official capacity
TERMINATED: 11/27/2012

represented by **Andrea Kloehn Naef**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara J Lathrop
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy S Skarda
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	clear	Docket Text
06/09/2011	1	<input type="checkbox"/>	NOTICE OF REMOVAL by Minneapolis, The City of, John Does 1-15 from Hennepin County District Court. (Filing fee \$ 350 receipt number 4055020) assigned to Judge Donovan W. Frank per Civil Rights List referred to Magistrate Judge Janie S. Mayeron, filed by Minneapolis, The City of, John Does 1-15. (Attachments: # 1 Summons, # 2 Complaint, # 3 Civil Cover Sheet) (jz) (Entered: 06/09/2011)
06/09/2011	2	<input type="checkbox"/>	ANSWER to Complaint (Notice of Removal) by John Does 1-15, Minneapolis, The City of. (jz) (Entered: 06/09/2011)
06/10/2011	3	<input type="checkbox"/>	ORDER FOR PRETRIAL CONFERENCE: Pretrial Conference set for 8/16/2011 11:30 AM in Judge's Chambers, Suite 342 (STP) before Magistrate Judge Janie S. Mayeron. Rule 26 Meeting Report due by 8/2/2011. Signed by Magistrate Judge Janie S. Mayeron on 6/10/2011. (Attachments: # 1 Consent Form)(JME) (Entered: 06/10/2011)

07/21/2011	4	<input type="checkbox"/>	REPORT of Rule 26(f) Planning Meeting by Aisha Keten, James Keten. (Attachments: # 1 Certificate of Service)(Henning, Sarah) (Entered: 07/21/2011)
08/16/2011	5	<input type="checkbox"/>	Minute Entry for proceedings held before Magistrate Judge Janie S. Mayeron: Initial Pretrial Conference held on 8/16/2011. Order to issue. (LPH) (Entered: 08/16/2011)
08/17/2011	6	<input type="checkbox"/>	PRETRIAL SCHEDULING ORDER: Amended Pleadings due by 10/15/2011. Discovery due by 6/1/2012. Motions (non-disp) due 6/15/2012. Motions (disp) due by 9/1/2012. Ready for trial due by 2/1/2013. Signed by Magistrate Judge Janie S. Mayeron on 8/16/11. (LPH) (Entered: 08/17/2011)
10/24/2011	7	<input type="checkbox"/>	STIPULATION <i>for a Protective Order</i> by Aisha Keten, James Keten, Minneapolis, The City of. (Lathrop, Sara) (Entered: 10/24/2011)
11/01/2011	8	<input type="checkbox"/>	STIPULATION <i>to Amend Complaint</i> by Aisha Keten, James Keten and defendants. (Attachments: # 1 Exhibit(s) Proposed Amended Complaint, # 2 Exhibit(s) Red-Lined Complaint)(Applebaum, Paul) Added filer on 11/1/2011 (RLR). (Entered: 11/01/2011)
11/07/2011	9	<input type="checkbox"/>	ORDER: 1. The parties November 1, 2011 Stipulation to Amend Complaint [Docket No. 8] is granted. 2. On or before November 18, 2011, plaintiffs shall serve and file the Amended Complaint as attached as Exhibit 1 to the parties November 1, 2011 Stipulation to Amend Complaint [Docket No. 8]. 3. Defendants shall serve and file a response to the Amended Complaint pursuant to the Rules. Signed by Magistrate Judge Janie S. Mayeron on 11/07/2011. (lmb) (Entered: 11/07/2011)
11/07/2011	10	<input type="checkbox"/>	PROTECTIVE ORDER. Signed by Magistrate Judge Janie S. Mayeron on 11/7/11. (jam) (Entered: 11/08/2011)
11/11/2011	11	<input type="checkbox"/>	AMENDED COMPLAINT against All Defendants, filed by James Keten, Aisha Keten. (Attachments: # 1 Certificate of Service) (Applebaum, Paul) (Entered: 11/11/2011)
11/23/2011	12	<input type="checkbox"/>	<i>Joint</i> ANSWER to Amended Complaint by Todd Babekuhl, Mark Beaupre, Kendal Chambers, Scott Creighton, Chad Fuchs, Chris Garbisch, Mark Kaspszak, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, Mark Osland, George Peltz, Lucas Peterson, Joshua Rick, Nick Rowe, Peter Rud. (Lathrop, Sara) (Entered: 11/23/2011)
02/28/2012	13	<input type="checkbox"/>	NOTICE of Appearance by Andrew M. Irlbeck on behalf of All Plaintiffs. (Irlbeck, Andrew) (Entered: 02/28/2012)
02/28/2012	14	<input type="checkbox"/>	STIPULATION <i>For Protective Order</i> by Todd Babekuhl, Mark Beaupre, Kendal Chambers, Scott Creighton, John Does 1-15, Chad Fuchs, Chris Garbisch, Mark Kaspszak, Aisha Keten, James Keten, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, Mark Osland, George Peltz, Lucas Peterson, Joshua Rick, Nick Rowe, Peter Rud. (Applebaum, Paul) (Entered: 02/28/2012)
03/06/2012	15	<input type="checkbox"/>	AMENDED PROTECTIVE ORDER. Signed by Magistrate Judge Janie S. Mayeron on 3/6/12. (jam) (Entered: 03/06/2012)
04/04/2012	16	<input type="checkbox"/>	STIPULATION re 6 Scheduling Order, <i>to Amend the Pretrial Scheduling Order</i> by Todd Babekuhl, Mark Beaupre, Kendal Chambers, Scott Creighton, Chad

			Fuchs, Chris Garbisch, Mark Kaspszak, Aisha Keten, James Keten, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, Mark Osland, George Peltz, Lucas Peterson, Joshua Rick, Nick Rowe, Peter Rud. (Lathrop, Sara) (Entered: 04/04/2012)
04/09/2012	17	<input type="checkbox"/>	AMENDED PRETRIAL SCHEDULING ORDER: Discovery due by 8/1/2012. Motions (non-disp) due 11/15/2012. Motions (disp) due by 12/1/2012. Ready for trial due by 4/1/2013. Signed by Magistrate Judge Janie S. Mayeron on 4/9/12. (jam) (Entered: 04/09/2012)
05/31/2012	18	<input type="checkbox"/>	NOTICE of Withdrawal as Attorney. (Henning, Sarah) Modified on 5/31/2012 (RLR). (Entered: 05/31/2012)
07/11/2012	19	<input type="checkbox"/>	STIPULATION <i>to Amend Pretrial Scheduling Order</i> by Todd Babekuhl, Mark Beaupre, Kendal Chambers, Scott Creighton, John Does 1-15, Chad Fuchs, Chris Garbisch, Mark Kaspszak, Aisha Keten, James Keten, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, Mark Osland, George Peltz, Lucas Peterson, Joshua Rick, Nick Rowe, Peter Rud. (Applebaum, Paul) (Entered: 07/11/2012)
07/18/2012	20	<input type="checkbox"/>	SECOND AMENDED PRETRIAL SCHEDULING ORDER: Discovery due by 8/15/2012. Signed by Magistrate Judge Janie S. Mayeron on 7/18/12. (jam) (Entered: 07/18/2012)
07/26/2012	21	<input type="checkbox"/>	STIPULATION <i>to File Second Amended Complaint</i> by Todd Babekuhl, Mark Beaupre, Kendal Chambers, Scott Creighton, Chad Fuchs, Chris Garbisch, Mark Kaspszak, Aisha Keten, James Keten, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, Mark Osland, George Peltz, Lucas Peterson, Joshua Rick, Nick Rowe, Peter Rud. (Attachments: # 1 Exhibit(s) Proposed Second Amended Complaint)(Irlbeck, Andrew) (Entered: 07/26/2012)
07/26/2012	22	<input type="checkbox"/>	ORDER : 1. The parties' July 26, 2012 Stipulation to File Second Amended Complaint [Docket No. 21] is granted. 2. On or before August 2, 2012, plaintiffs shall serve and file the Second Amended Complaint as attached as Exhibit 1 to the parties Stipulation. 3. Defendants shall serve and file a response to the Amended Complaint pursuant to the Rules. Signed by Magistrate Judge Janie S. Mayeron on 7/26/12. (jam) (Entered: 07/26/2012)
07/26/2012	23	<input type="checkbox"/>	AMENDED COMPLAINT against Todd Babekuhl, Mark Beaupre, Kendal Chambers, Scott Creighton, Chad Fuchs, Chris Garbisch, Mark Kaspszak, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, Mark Osland, George Peltz, Lucas Peterson, Joshua Rick, Nick Rowe, Peter Rud, filed by James Keten, Aisha Keten. (Applebaum, Paul) (Entered: 07/26/2012)
08/08/2012	24	<input type="checkbox"/>	ANSWER to Amended Complaint (<i>second</i>) by Todd Babekuhl, Mark Beaupre, Kendal Chambers, Scott Creighton, John Does 1-15, Chad Fuchs, Chris Garbisch, Mark Kaspszak, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, Mark Osland, George Peltz, Lucas Peterson, Joshua Rick, Nick Rowe, Peter Rud. (Lathrop, Sara) (Entered: 08/08/2012)
11/20/2012	25	<input type="checkbox"/>	NOTICE of Appearance by Andrea Kloehn Naef on behalf of Todd Babekuhl, Mark Beaupre, Kendal Chambers, Scott Creighton, Chad Fuchs, Chris Garbisch, Mark Kaspszak, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, Mark Osland, George Peltz, Lucas Peterson, Joshua Rick, Nick Rowe,

			Peter Rud. (Naef, Andrea) (Entered: 11/20/2012)
11/26/2012	26	<input type="checkbox"/>	STIPULATION of Dismissal <i>as to Certain Claims and Certain Defendants</i> by Todd Babekuhl, Mark Beaupre, Kendal Chambers, Scott Creighton, Chad Fuchs, Chris Garbisch, Mark Kaspszak, Aisha Keten, James Keten, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, Mark Osland, George Peltz, Lucas Peterson, Joshua Rick, Nick Rowe, Peter Rud. (Lathrop, Sara) (Entered: 11/26/2012)
11/27/2012	27	<input type="checkbox"/>	ORDER FOR DISMISSAL OF CERTAIN CLAIMS AND CERTAIN DEFENDANTS. (See Order for details.) Signed by Judge Donovan W. Frank on 11/27/12. (BJS) (Entered: 11/27/2012)
11/30/2012	28	<input type="checkbox"/>	MOTION for Partial Summary Judgment by Chad Fuchs, Chris Garbisch, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, George Peltz. (Lathrop, Sara) (Entered: 11/30/2012)
11/30/2012	29	<input type="checkbox"/>	NOTICE OF HEARING ON MOTION 28 MOTION for Partial Summary Judgment : Motion Hearing set for 1/18/2013 09:00 AM in Courtroom 7C (STP) before Judge Donovan W. Frank. (Lathrop, Sara) (Entered: 11/30/2012)
11/30/2012	30	<input type="checkbox"/>	MEMORANDUM in Support re 28 MOTION for Partial Summary Judgment filed by Chad Fuchs, Chris Garbisch, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, George Peltz. (Attachments: # 1 LR7.1/LR72.2 Word Count Compliance Certificate)(Lathrop, Sara) (Entered: 11/30/2012)
11/30/2012	31	<input type="checkbox"/>	AFFIDAVIT of Sara J. Lathrop in SUPPORT OF 28 MOTION for Partial Summary Judgment filed by Chad Fuchs, Chris Garbisch, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, George Peltz. (Attachments: # 1 Exhibit(s) 1, # 2 Exhibit(s) 2, # 3 Exhibit(s) 3, # 4 Exhibit(s) 4, # 5 Exhibit(s) 5, # 6 Exhibit(s) 6, # 7 Exhibit(s) 7, # 8 Exhibit(s) 8, # 9 Exhibit(s) 9)(Lathrop, Sara) SEALED DOCUMENT RECEIVED IN CLERK'S OFFICE ON 12/4/12. (KT) (Entered: 11/30/2012)
11/30/2012	32	<input type="checkbox"/>	Declaration of Chad Fuchs in Support of 28 MOTION for Partial Summary Judgment filed by Chad Fuchs, Chris Garbisch, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, George Peltz. (Attachments: # 1 Exhibit(s) 1, # 2 Exhibit(s) 2)(Lathrop, Sara) (Entered: 11/30/2012)
11/30/2012	33	<input type="checkbox"/>	AFFIDAVIT of Steven Lynch in SUPPORT OF 28 MOTION for Partial Summary Judgment filed by Chad Fuchs, Chris Garbisch, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, George Peltz. (Attachments: # 1 Exhibit(s) 1, # 2 Exhibit(s) 2, # 3 Exhibit(s) 3, # 4 Exhibit(s) 4, # 5 Exhibit(s) 5)(Lathrop, Sara) (Entered: 11/30/2012)
12/14/2012	34	<input type="checkbox"/>	JURY TRIAL NOTICE. Jury Trial set for 4/8/2013 09:00 AM in Courtroom 7C (STP) before Judge Donovan W. Frank. See Notice for additional deadlines and details.(BJS) (Entered: 12/14/2012)
12/19/2012	35	<input type="checkbox"/>	ORDER FOR SETTLEMENT CONFERENCE A Settlement Conference set for 3/11/2013 09:30 AM in Courtroom 6B (STP) before Magistrate Judge Janie S. Mayeron. Signed by Magistrate Judge Janie S. Mayeron on 12/19/2012. (jz) (Entered: 12/19/2012)

12/20/2012	36	<input type="checkbox"/>	LETTER TO DISTRICT JUDGE by Chad Fuchs, Chris Garbisch, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, George Peltz . (Lathrop, Sara) (Entered: 12/20/2012)
12/22/2012	37	<input type="checkbox"/>	MEMORANDUM in Opposition re 28 MOTION for Partial Summary Judgment filed by All Plaintiffs. (Attachments: # 1 LR7.1/LR72.2 Word Count Compliance Certificate, DOCUMENT FILED IN ERROR-WILL REFILE # 2 Certificate of Service)(Irlbeck, Andrew) Modified text on 12/26/2012 (MMP). (Entered: 12/22/2012)
12/22/2012	38	<input type="checkbox"/>	AFFIDAVIT of Andrew M. Irlbeck in OPPOSITION TO 28 MOTION for Partial Summary Judgment filed by All Plaintiffs. (Attachments: # 1 Placeholder for Exhibit 1 (Sealed Document), # 2 Placeholder for Exhibit 2 (Sealed Document), # 3 Exhibit(s) 3, # 4 Exhibit(s) 4, # 5 Exhibit(s) 5, # 6 Exhibit(s) 6, # 7 Exhibit(s) 7, # 8 Exhibit(s) 8, # 9 Exhibit(s) 9, # 10 Exhibit(s) 10, # 11 Exhibit(s) 11, # 12 Exhibit(s) 12, # 13 Exhibit(s) 13, # 14 Exhibit(s) 14, # 15 Placeholder for Exhibit 15 (Sealed Document), # 16 Exhibit(s) 16, # 17 Exhibit(s) 17, # 18 Exhibit(s) 18, # 19 Exhibit(s) 19, # 20 Exhibit(s) 20, # 21 Exhibit(s) 21)(Irlbeck, Andrew)SEALED DOCUMENT RECEIVED IN CLERK'S OFFICE ON 12/21/12 Modified on 12/28/2012 (LGL). (Entered: 12/22/2012)
12/24/2012	39	<input type="checkbox"/>	Declaration of Chad Fuchs in Support of 28 MOTION for Partial Summary Judgment with attached Exhibits A-B filed by Chad Fuchs, Chris Garbisch, Steven Lynch, Minneapolis, The City of, Aaron Morrison, George Peltz. (Lathrop, Sara) Modified text on 12/26/2012 (MMP). (Entered: 12/24/2012)
12/26/2012	40	<input type="checkbox"/>	AMENDED CERTIFICATE OF SERVICE by Aisha Keten, James Keten re 38 Affidavit in Opposition to Motion,, 37 Memorandum in Opposition to Motion. (Irlbeck, Andrew) Modified text on 12/26/2012 (MMP). (Entered: 12/26/2012)
01/04/2013	41	<input type="checkbox"/>	Reply to Response to Motion re 28 MOTION for Partial Summary Judgment filed by Chad Fuchs, Chris Garbisch, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, George Peltz. (Attachments: # 1 LR7.1/LR72.2 Word Count Compliance Certificate)(Lathrop, Sara) (Entered: 01/04/2013)
01/18/2013	42	<input type="checkbox"/>	Minute Entry for proceedings held before Judge Donovan W. Frank: Motion Hearing held on 1/18/2013 re 28 MOTION for Partial Summary Judgment filed by George Peltz, Chris Garbisch, Minneapolis, The City of, Steven Lynch, Chad Fuchs, Steven Mosey, Aaron Morrison. Matter taken under advisement; written order to issue. (Court Reporter Jeanne Anderson) (BJS) (Entered: 01/18/2013)
02/06/2013	43	<input type="checkbox"/>	LETTER TO MAGISTRATE JUDGE by Chad Fuchs, Chris Garbisch, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, George Peltz . (Lathrop, Sara) (Entered: 02/06/2013)
03/08/2013	44	<input type="checkbox"/>	MEMORANDUM OPINION AND ORDER granting in part and denying in part 28 Motion for Partial Summary Judgment (see Memorandum Opinion and Order for details) (Written Opinion). Signed by Judge Donovan W. Frank on 03/08/2013. (rlb) (Entered: 03/08/2013)
03/11/2013	45	<input type="checkbox"/>	Minute Entry for proceedings held before Magistrate Judge Janie S. Mayeron: Settlement Conference held on 3/11/2013. Settlement reached(Audio File: Courtroom 6B/03.11.13/15:30-15:41) (jz) (Entered: 03/12/2013)

03/29/2013	46	<input type="checkbox"/>	DOCUMENT FILED IN ERROR: WILL REFILE. JOINT MOTION for Approval of Minor Settlement by Todd Babekuhl, Mark Beaupre, Kendal Chambers, Scott Creighton, John Does 1-15, Chad Fuchs, Chris Garbisch, Mark Kaspszak, Aisha Keten, James Keten, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, Mark Osland, George Peltz, Lucas Peterson, Joshua Rick, Nick Rowe, Peter Rud. (Attachments: # 1 Placeholder for Verified Petition for Approval of Minor Settlement (filed under seal))(Irlbeck, Andrew) Modified text on 4/1/2013 (MMP). DOCUMENTS RECEIVED IN CLERKS OFFICE 4/1/13. Modified on 4/2/2013 (GMW). Modified on 4/4/2013 (kt). (Entered: 03/29/2013)
03/29/2013	47	<input type="checkbox"/>	CERTIFICATE OF SERVICE by Aisha Keten, James Keten re 46 PETITION for Approval of Minor Settlement <i>and Joint Motion for Approval</i> (Irlbeck, Andrew) (Entered: 03/29/2013)
04/02/2013	48	<input type="checkbox"/>	STIPULATION of Dismissal <i>Without Prejudice - as to individually named Defendants only</i> by Chad Fuchs, Chris Garbisch, Aisha Keten, James Keten, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, George Peltz. (Lathrop, Sara) (Entered: 04/02/2013)
04/04/2013	49	<input type="checkbox"/>	ORDER FOR DISMISSAL WITHOUT PREJUDICE. Plaintiffs' claims against Sergeant Steven Mosey, and Officers Aaron Morrison, Chad Fuchs, Steven Lynch, Chris Garbisch, and George Peltz, are DISMISSED WITHOUT PREJUDICE and without costs to either party. Signed by Judge Donovan W. Frank on 4/4/2013. (BJS) (Entered: 04/04/2013)
04/04/2013	50	<input type="checkbox"/>	Unopposed Motion for Approval of Minor Settlement by Aisha Keten, James Keten. (Attachments: # 1 Placeholder for Petition for Approval of Minor Settlement (Filed Under Seal))(Irlbeck, Andrew) Modified text on 4/4/2013 (MMP). DOCUMENTS RECEIVED IN THE CLERKS OFFICE ON 4/4/13. Modified on 4/5/2013 (GMW). (Entered: 04/04/2013)
04/04/2013	51	<input type="checkbox"/>	CERTIFICATE OF SERVICE by Aisha Keten, James Keten re 50 PETITION for Approval of Minor Settlement <i>and Unopposed Motion for Approval of Minor Settlement</i> (Irlbeck, Andrew) (Entered: 04/04/2013)
04/04/2013	52	<input type="checkbox"/>	NOTICE OF HEARING ON MOTION 50 PETITION for Approval of Minor Settlement : Motion Hearing set for 4/12/2013 03:00 PM in Judge's Chambers, Suite 724 (STP) before Judge Donovan W. Frank. (Irlbeck, Andrew) (Entered: 04/04/2013)
04/09/2013	53	<input type="checkbox"/>	LETTER TO DISTRICT JUDGE by Aisha Keten, James Keten . (Attachments: # 1 Placeholder for Letter to District Judge (Filed Under Seal))(Irlbeck, Andrew) DOCUMENT RECEIVED IN CLERKS OFFICE 4/10/13. Modified on 4/11/2013 (GMW). (Entered: 04/09/2013)
04/09/2013	54	<input type="checkbox"/>	CERTIFICATE OF SERVICE by Aisha Keten, James Keten re 53 Letter to District Judge (Irlbeck, Andrew) (Entered: 04/09/2013)
04/12/2013	55		SEALED ORDER. Signed by Judge Donovan W. Frank on 4/12/13. (kt) CC: Attorneys of record. (kt) (Entered: 04/12/2013)
04/12/2013	56	<input type="checkbox"/>	Minute Entry for proceedings held before Judge Donovan W. Frank: Motion Hearing held on 4/12/2013 re 50 PETITION for Approval of Minor Settlement

			filed by James Keten, Aisha Keten. Written order to issue. (Court Reporter Jeanne Anderson) (BJS) (Entered: 04/12/2013)
05/08/2013	57	<input type="checkbox"/>	STIPULATION of Dismissal <i>with prejudice</i> by Chad Fuchs, Chris Garbisch, Aisha Keten, James Keten, Steven Lynch, Minneapolis, The City of, Aaron Morrison, Steven Mosey, George Peltz. (Lathrop, Sara) (Entered: 05/08/2013)
05/10/2013	58	<input type="checkbox"/>	ORDER FOR DISMISSAL WITH PREJUDICE re 57 Stipulation of Dismissal filed by George Peltz, Chris Garbisch, Minneapolis, The City of, Steven Lynch, Chad Fuchs, Steven Mosey, James Keten, Aaron Morrison, Aisha Keten. Signed by Judge Donovan W. Frank on 05/10/2013. (rlb) (Entered: 05/10/2013)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

**James Keten and Aisha Keten,
individually and o/b/o minor children Court File No.:
K.K.K. and N.Z.K.,**

Plaintiffs,

vs.

**NOTICE OF REMOVAL TO
FEDERAL COURT**

**John Does 1-15, in their individual and
official capacities, as Police Officers for
the City of Minneapolis, and the City of
Minneapolis,**

JURY TRIAL DEMANDED

Defendants.

Defendants, through their attorney, Sara J. Lathrop, Assistant Minneapolis City Attorney, 350 South Fifth Street, Suite 210, Minneapolis, MN 55415, hereby give notice to the Plaintiffs James Keten and Aisha Keten and to the State Court as follows:

1. Defendants John Does 1-15 and the City of Minneapolis are Defendants in a served but not filed civil action in the District Court of the Fourth Judicial District of the State of Minnesota entitled *James Keten and Aisha Keten v. John Does 1-15 and the City of Minneapolis*, and a trial has not yet been had thereon.

2. On May 26, 2011, a copy of the Summons and Complaint in the above-entitled action was served upon the City of Minneapolis. A copy of the Summons is annexed as **Exhibit A**. A copy of the Complaint is annexed as **Exhibit B**. A copy of Defendants' Answer is annexed as **Exhibit C**. The John

Doe defendants have not been identified to date. The John Doe Defendants have not been served.

3. This Notice of Removal is filed pursuant to Title 28, United States Code, Sections 1441(a) and (b), said action in the State Court commenced against Defendants being a civil action alleging that Defendants violated the civil rights of the Plaintiff resulting in injury.

4. The Complaint alleges under 42 U.S.C. § 1983 that Defendants violated Plaintiff's rights secured by the Fourth and Fourteenth Amendments to the United States Constitution. These are claims over which this Court has original jurisdiction pursuant to 28 U.S.C. §1343, as they arise under the laws of the United States within the meaning of 28 U.S.C. § 1331, and this claim is therefore removable under 28 U.S.C. § 1441.

5. The Complaint also asserts pendant common law claims under Minnesota law.

6. Defendants file herewith a copy of all process, pleadings and orders served upon it in this action, has sent written notice of the filing of this Notice of Removal to Plaintiff, will promptly file a copy of this Notice with the Clerk of the District Court for the Fourth Judicial District of the State of Minnesota, County of Hennepin, and attach the Federal Rules of Civil Procedure, Rule 11 affidavit.

WHEREFORE, notice is hereby given that the said action is removed from

the State Court to this Court for trial or such other determination as this Court
may make regarding the action and in accordance with its jurisdictional limits
under 28 U.S.C. § 1441.


Dated:

6-9-11

SUSAN L. SEGAL

City Attorney

By


SARA J. LATHROP

Assistant City Attorney

Attorney Reg. No. 0310232

TIMOTHY S. SKARDA

Assistant City Attorney

Attorney Reg. No. 10176X

City Hall-Room 210

350 South 5th Street

Minneapolis, MN 55415

(612) 673-2072

Attorneys for Defendants

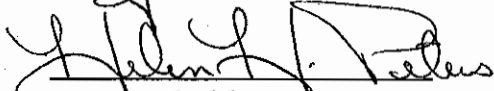
AFFIDAVIT OF SARA J. LATHROP

STATE OF MINNESOTA)
)SS
COUNTY OF HENNEPIN)

Sara J. Lathrop, being first duly sworn, states and alleges as follows:

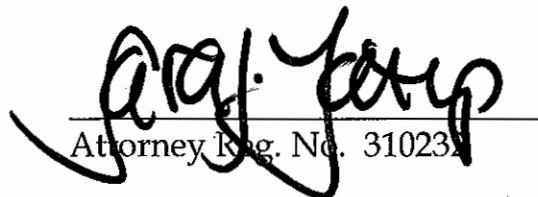
1. Affiant is an attorney with the Office of the City Attorney for the City of Minneapolis and represents Defendant City of Minneapolis named herein; that she has read the foregoing Notice of Removal of Action to Federal Court and knows the contents thereof; that the same is true of her own knowledge, except as to any matters stated therein on information and belief, and as to those matters, she believes them to be true.

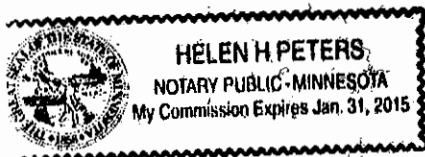
Subscribed and sworn to
before me this 9th day
of June, 2011.



Notary Public

My Commission expires: 1-31-2015


Attorney Reg. No. 31023



FILED
MINNEAPOLIS, MINN
11 MAY 26 PM 12:15
CITY CLERK
DEPARTMENT

STATE OF MINNESOTA
COUNTY OF HENNEPIN

PERSONALLY SERVED

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Court File No.:
Case Type: Civil

James Keten and Aisha Keten,
individually and o/b/o minor
children K.K.K. and N.Z.K.,

Plaintiffs,

v.

SUMMONS

John Does 1-15, in their
individual and official capacities,
as Police Officers for the City of Minneapolis,
and the City of Minneapolis,
Defendants.

TO: CITY OF MINNEAPOLIS, CITY HALL, 350 SOUTH FIFTH STREET,
MINNEAPOLIS, MINNESOTA 55415.

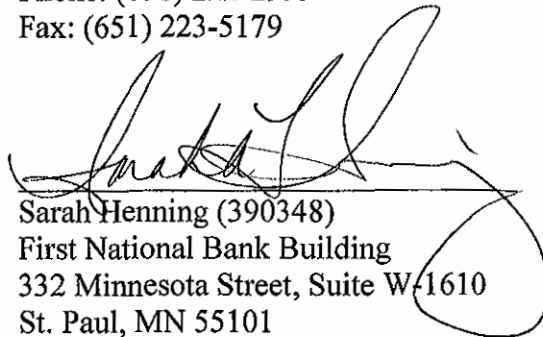
YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorneys an Answer to the Complaint, which is herewith served upon you, within twenty (20) days after the service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This case may be subject to Alternative Dispute Resolution (ADR) processes under Minn. Gen. R. Prac. 114.01. The Court Administrator or your attorney can provide you with information about ADR options and a list of neutrals available in your area. ADR does not affect your obligations to respond to the Summons and Complaint within twenty (20) days.

Dated: 5/26/11



Paul Applebaum (223098)
First National Bank Building
332 Minnesota Street, Suite W-1610
St. Paul, MN 55101
Phone: (651) 222-2999
Fax: (651) 223-5179



Sarah Henning (390348)
First National Bank Building
332 Minnesota Street, Suite W-1610
St. Paul, MN 55101
Phone: (651) 222-2999
Fax: (651) 223-5179

FILED
MINNEAPOLIS, MINN

PERSONALLY SERVED

STATE OF MINNESOTA

11 MAY 26 PM 12:15

DISTRICT COURT

COUNTY OF HENNEPIN

CITY CLERK
DEPARTMENT

FOURTH JUDICIAL DISTRICT

Court File No.:
Case Type: Civil

James Keten and Aisha Keten,
individually and o/b/o minor
children K.K.K. and N.Z.K.,

Plaintiffs,

COMPLAINT

v.

JURY TRIAL DEMANDED

John Does 1-15, in their
individual and official capacities,
as Police Officers for the City of Minneapolis,
and the City of Minneapolis,

Defendants.

Plaintiffs, James and Aisha Keten, individually and on behalf of their minor children,
K.K.K. and N.Z.K., state and allege as follows:

1. This is an action for money damages for injuries sustained by Plaintiffs as a result of the excessive use of force and violation of their constitutional rights by the above-mentioned on-duty Police Officers ("Defendants"). Defendants' conduct violated Plaintiffs' well-settled civil rights while acting under the color of state law. Defendants' conduct also violated the common laws of the State of Minnesota.

2. Plaintiffs bring this action pursuant to 42 U.S.C. §§ 1983 and 1988, the Fourth and Fourteenth Amendments to the United States Constitution and 28 U.S.C. §§ 1331 and 1343(3).

PARTIES AND VENUE

3. Because all of the facts complained of arose in Minneapolis, Hennepin County, Minnesota, this action properly lies in Hennepin County.

4. At all times relevant to this action, Plaintiffs were and are citizens of the United States and residents of Hennepin County, Minnesota. Plaintiffs James and Aisha Keten are of the age of majority. At all times relevant to this action, Defendants were duly appointed police officers of the City of Minneapolis.

FACTUAL ALLEGATIONS

5. At all times relevant to this lawsuit, Plaintiffs Mr. and Mrs. Keten were tenants of the lower level of a home located at 2405 Humboldt Avenue North, #1, Minneapolis, Minnesota.

6. On the morning of April 13, 2011, Mr. and Mrs. Keten were at home with their two daughters, K.K.K. and N.Z.K., as well as their four dogs.

7. K.K.K. and N.Z.K. were in the kitchen eating breakfast while Mrs. Keten got ready for work. Mrs. Keten had recently let one of the dogs outside, so the front door was unlocked.

8. Defendants, who were at the Keten's home to execute a search warrant, barged through the Keten's front door and began firing their 9mm handguns. Defendants did not "knock and announce," as required under the warrant, nor did they give any warning that they were entering the Keten family's home.

9. One of the Keten's dogs, Kano, was laying in the front living room when Defendants entered. Before the dog had time to stand up, Defendants shot and killed the dog, splattering blood all over the children's "Dora the Explorer" book that sat nearby. Kano did not bark nor

did he display any aggression towards Defendants. The first thing the Keten's heard that morning when Defendants came through the door was the sound of gunfire killing Kano.

10. At the same time, other Defendants entered the kitchen where three-year-old K.K.K., and one-year-old N.Z.K., were eating breakfast at the kitchen table, while Mrs. Keten stood nearby. Without warning or provocation, Defendants fired multiple hollow point rounds towards the kitchen table, killing another of the Keten's dogs, Remy, and splattering blood all over K.K.K and the kitchen walls and floor.

11. Because this happened without warning or provocation, Remy was still laying on the floor and had not barked or charged at Defendants when she was shot dead. Defendants had a clear view of K.K.K. and N.Z.K. as they sat next to Remy.

12. Defendants were using hollow-point 9mm ammunition as they fired indiscriminately into the kitchen. One of these hollow-point rounds was lodged in the wall directly behind where the Ketens' daughters sat, while several more entered the floor directly in front of the young girls.

13. Mrs. Keten was put in grave fear for her safety as well as that of her daughters who were in the line of fire.

14. After killing the two dogs and nearly killing the two children, Defendants began to beat Mr. Keten about his back, neck, head, and face as he lay face down on the living room floor.

15. As Defendants beat Mr. Keten they repeatedly told him to "Shut the fuck up N****r!"

16. Defendants zip-tied Mr. Keten's hands behind his back, pulled his sweatshirt over his head, and continued to beat and kick him. Mr. Keten begged Defendants to stop kicking him in

the face, to which one of the Defendants replied, "We do what the fuck we want N****r," and stepped on Mr. Keten's face.

17. Defendants ransacked the house, destroying much of the Keten family's personal property. Defendants found no evidence of criminal activity within the house, but they did find and steal \$9,400 in cash from Mr. and Mrs. Keten. Defendants did not report the seizure of this money on the receipt for the search warrant.

18. Defendants attempted to pick up most of their shell casings before they left; however, once the dust had settled and Mr. and Mrs. Keten were able to attend to their traumatized children, Mr. Keten discovered that one of his daughters had a 9mm shell casing in her mouth. He then discovered several more casings on the floor of his home.

19. Mr. Keten was treated for his injuries. K.K.K. and N.Z.K. are beginning counseled because they were brutalized by Defendants. Three year old K.K.K. now asks her father several times each day to make sure the door is locked.

20. The Keten family, especially K.K.K. and N.Z.K., live in a state of constant fear that Defendants will return to the house and kill them like they shot Remy and Kano. Ultimately, the Ketens moved as a result of this incident.

COUNT 1 – VIOLATIONS OF 42 U.S.C. 1983

Plaintiffs re-allege paragraphs 1-20 and further state:

21. By shooting indiscriminately into Plaintiffs' home, and directly at K.K.K. and N.Z.K., and by beating and kicking Mr. Keten, Defendants acted intentionally to deprive Plaintiffs of their right to be free from excessive and unjustified deadly force. These rights are secured to Plaintiffs by the Fourth and Fourteenth Amendments to the Constitution of the United States.

22. Defendants also entered the home without a valid warrant, searched vehicles which were not named in the warrant, and stole \$9,400 in cash from the Ketens, in violation of the Fourth Amendment's strictures against unreasonable searches and seizures.

23. As a direct and proximate result of Defendants' excessive use of force, Plaintiffs have suffered physical injury, pain and suffering, mental anguish and humiliation.

Plaintiffs demand relief as set forth below.

COUNT 2 – BATTERY

Plaintiffs re-allege paragraphs 1-23 and further state:

24. By firing indiscriminately into Plaintiffs' home and beating and kicking Mr. Keten while he was compliant, Defendants used more physical force than was reasonable and necessary under the circumstances. Such unwanted contact and excessive force constitutes common law battery.

25. As a direct and proximate result of Defendants' battery, Plaintiffs suffered physical injury, pain and suffering, mental anguish and humiliation.

26. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.

Plaintiffs demand relief as set forth below.

COUNT 3 – ASSAULT

Plaintiffs re-allege paragraphs 1-26 and further state:

27. Defendants, by their unwarranted shooting into Plaintiffs' home and their beating of Mr. Keten, caused Plaintiffs to be in reasonable fear of imminent great bodily harm and death. These actions and the display of force by Defendants constitutes common law assault.

28. As a direct and proximate result of Defendants' illegal entry, assault, and battery, Plaintiffs suffered physical injury, pain and suffering, mental anguish and humiliation.

29. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.
Plaintiffs demand relief as set forth below.

COUNT 4 – CONVERSION

Plaintiffs re-allege paragraphs 1-29 and further state:

30. By stealing \$9,400 in cash from the Keten family, Defendants knowingly converted property that belonged to the Keten family.

31. This act was inconsistent with the ownership rights of the Keten family, and constituted the common law tort of conversion.


32. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.
Plaintiffs demand relief as set forth below.

WHEREFORE, Plaintiffs pray for judgment as follows:

- a. awarding Plaintiffs compensatory damages against Defendants, jointly and severally;
- b. awarding Plaintiffs punitive damages against the Defendants, jointly and severally, which are available on the § 1983 claim against the individual officers as a matter of federal common law, *Smith v. Wade*, 461 U.S. 30 (1983), in an

- amount to be determined at trial; Plaintiffs also hereby reserve the right to amend the Complaint to add a claim for punitive damages on their state law claims; and
- c. awarding Plaintiffs all of their costs and disbursements, including reasonable attorneys' fees as allowed by law, including 42 U.S.C. § 1988; and
 - d. granting such other relief as the Court may deem just and equitable; and
 - e. Plaintiffs demand a jury trial.

Dated: 5/26/11



Paul Applebaum (223098)
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St. Paul, Minnesota 55101
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(fax) (651) 223-5179
paulpapple@hotmail.com



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(fax) (651) 223-5179
sarah@sahenninglaw.com

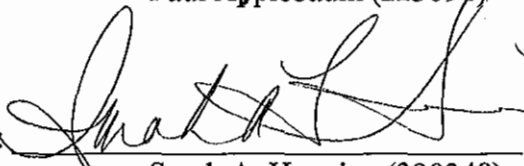
Attorneys for Plaintiffs

**ACKNOWLEDGMENT REQUIRED BY
MINNESOTA STATUTE § 549.211**

The party represented by the undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, monetary and/or non-monetary sanctions may be imposed for claims made in violation of that statute.

Dated: 5/26/11

By: 
Paul Applebaum (223098)

By: 
Sarah A. Henning (390348)

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

James Keten and Aisha Keten, individually and o/b/o minor children K.K.K. and N.Z.K.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Paul Applebaum and Sara Henning, 332 Minnesota Street, Suite W-1610, St. Paul, MN, (651) 222-2999

DEFENDANTS

John Does 1-15, in their individual and official capacities, as Police Officers for the City of Minneapolis, and the City of _____

County of Residence of First Listed Defendant Hennepin
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Sara J. Lathrop, Room 210, City Hall, 350 South Fifth Street, Minneapolis, MN 55415, (612) 673-2072

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excl. Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395H) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
11-CV-1520 (DWF/JSM)

James Keten and Aisha Keten,
individually and o/b/o minor
child K.K.K.,

Plaintiffs,

**FIRST AMENDED
COMPLAINT**

v.

JURY TRIAL DEMANDED

Sergeants Steven Mosey,
Mark Osland and Kendal Chambers,
and Officers Aaron Morrison,
Chad Fuchs, Steven Lynch,
Todd Babekuhl, Lucas Peterson,
Scott Creighton, Chris Garbisch,
Nick Rowe, Mark Kaspszak,
Joshua Rick, Peter Rud,
George Peltz, and Mark Beaupre, in their
individual and official capacities,
and the City of Minneapolis,

Defendants.

Plaintiffs, James and Aisha Keten, individually and on behalf of their minor child, K.K.K., state and allege as follows:

1. This is an action for money damages for injuries sustained by Plaintiffs as a result of the violations of their constitutional rights by the above-mentioned on-duty Police Officers (“Defendants”). The conduct of the Defendants violated Plaintiffs’ well-settled civil rights while acting under the color of state law. Defendants’ conduct also violated the common laws of the State of Minnesota.

2. Plaintiffs bring this action pursuant to 42 U.S.C. §§ 1983 and 1988, the Fourth and Fourteenth Amendments to the United States Constitution and 28 U.S.C. §§ 1331 and 1343(3).

PARTIES AND VENUE

3. Because all of the facts complained of arose in Minneapolis, Hennepin County, Minnesota, this action properly lies in the District of Minnesota.

4. At all times relevant to this action, Plaintiffs were and are citizens of the United States and residents of Hennepin County, Minnesota. Plaintiffs James and Aisha Keten are of the age of majority. At all times relevant to this action, Defendants were duly appointed police officers of the City of Minneapolis.

FACTUAL ALLEGATIONS

5. At all times relevant to this lawsuit, Plaintiffs Mr. and Mrs. Keten were tenants of the lower level of a home located at 2504 Humboldt Avenue North, #1, Minneapolis, Minnesota.

6. On the morning of April 13, 2011, Mr. and Mrs. Keten were at home with their two daughters, K.K.K. and N.Z.K., as well as their four dogs.

7. K.K.K. was in the kitchen eating breakfast while Mrs. Keten got ready for work. N.Z.K. was elsewhere in the home. Mrs. Keten had recently let one of the dogs outside, so the front door was unlocked.

8. Defendants, who were at the Keten's home to execute a search warrant, barged through the Keten's front door without warning and began firing their 9mm handguns. Defendants did not "knock and announce," as required under the warrant, nor did they give any warning that they were entering the Keten family's home.

9. One of the Keten's dogs, Kano, was laying in the front living room when Defendants entered. Before the dog had time to stand up, Defendant Morrison shot and killed the dog, splattering blood all over the children's "Dora the Explorer" book that sat nearby. Kano did not bark nor did he display any aggression towards Defendants. The first thing the Ketens heard that morning when Defendants came through the door was the sound of gunfire killing Kano.

10. At the same time, other Defendants entered the kitchen where three-year-old K.K.K., was eating breakfast at the kitchen table, while Mrs. Keten stood nearby. Defendant Fuchs fired multiple hollow point rounds towards the kitchen table, killing another of the family's dogs, Remy, and splattering blood all over K.K.K and the kitchen walls and floor.

11. Remy had not barked, charged or otherwise behaved aggressively towards the Defendants before she was shot dead. Defendants had a clear view of K.K.K. as she sat next to Remy at the kitchen table.

12. Defendant Fuchs was using hollow-point 9mm ammunition as he fired indiscriminately into the kitchen. One of these hollow-point rounds was lodged in the wall directly behind where K.K.K. sat, while several more entered the floor directly in front of the young girl.

13. Mrs. Keten was put in grave fear for her safety as well as that of her daughter by the actions of the Defendants. K.K.K. also feared for her own safety as well as that of her family members.

14. After killing the two dogs and nearly killing one child, Defendants began to beat Mr. Keten about his back, neck, head, and face as he lay face down on the living room floor.

15. As Defendants beat Mr. Keten while he lay compliant on the floor of his own living room, Defendants repeatedly told him to "Shut the fuck up N****r!"

16. Defendants zip-tied Mr. Keten's hands behind his back, pulled his sweatshirt over his head, and continued to beat and kick him. Mr. Keten begged Defendants to stop kicking him in the face, to which one of the Defendants replied, "We do what the fuck we want N****r," while continuing to step on Mr. Keten's face.

17. Defendants ransacked the house, destroying much of the Keten family's personal property. Defendants found no evidence of criminal activity within the house, but they did find and steal \$9,400 in cash from Mr. and Mrs. Keten. Defendants did not report the seizure of this money on the receipt for the search warrant.

18. Defendants attempted to pick up most of their shell casings before they left; however, once the dust had settled and Mr. and Mrs. Keten were able to attend to their traumatized children, Mr. Keten discovered that one of his daughters had a 9mm shell casing in her mouth. He then discovered several more casings on the floor of his home.

19. Mr. Keten was treated for his injuries. K.K.K. is being counseled because of the conduct of the Defendants. Three year old K.K.K. now asks her father several times each day to make sure the door is locked.

20. The Keten family, especially K.K.K., live in a state of constant fear that Defendants will return to the house and kill them like they shot Remy and Kano. Ultimately, the Ketens moved as a result of this incident.

COUNT 1 – FOURTH AMENDMENT VIOLATIONS OF 42 U.S.C. 1983

Plaintiffs re-allege paragraphs 1-20 and further state:

21. By entering without knocking and announcing, shooting indiscriminately into Plaintiffs' home and directly at K.K.K., by beating and kicking Mr. Keten, and by seizing \$9400

in cash without a lawful purpose, Defendants acted intentionally to deprive Plaintiffs of their right to be free from excessive and unjustified deadly force. These rights are secured to Plaintiffs by the Fourth and Fourteenth Amendments to the Constitution of the United States.

22. Defendants also entered the home without a valid warrant, searched vehicles which were not named in the warrant, and stole \$9,400 in cash from the Ketens, in violation of the Fourth Amendment's strictures against unreasonable searches and seizures.

23. As a direct and proximate result of Defendants' excessive use of force, Plaintiffs have suffered physical injury, pain and suffering, mental anguish and humiliation.

Plaintiffs demand relief as set forth below.

COUNT 2 – FOURTEENTH AMENDMENT VIOLATIONS OF 42 U.S.C. 1983

Plaintiffs re-allege paragraphs 1-23 and further state:

24. By firing multiple 9mm rounds directly at K.K.K. while she ate her breakfast, Defendants engaged in conscience shocking behavior that interfered with her fundamental rights in violation of the Fourteenth Amendment.

25. As a direct and proximate result of the Defendants' conduct, which constitutes substantive due process violations, K.K.K. has been forced to endure severe mental pain and suffering for which she continues to undergo psychiatric counseling.

Plaintiffs demand relief as set forth below.

COUNT 3 – BATTERY

Plaintiffs re-allege paragraphs 1-25 and further state:

26. By firing indiscriminately into Plaintiffs' home and beating and kicking Mr. Keten while he was compliant, Defendants used more physical force than was reasonable and necessary

under the circumstances. Such unwanted contact and excessive force constitutes common law battery.

27. As a direct and proximate result of Defendants' battery, Plaintiffs suffered physical injury, pain and suffering, mental anguish and humiliation.

28. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.

Plaintiffs demand relief as set forth below.

COUNT 4 – ASSAULT

Plaintiffs re-allege paragraphs 1-28 and further state:

29. Defendants, by their unwarranted shooting into Plaintiffs' home and their beating of Mr. Ketan, caused Plaintiffs to be in reasonable fear of imminent great bodily harm and death. These actions and the display of force by Defendants constitute common law assault.

30. As a direct and proximate result of Defendants' illegal entry, assault, and battery, Plaintiffs suffered physical injury, pain and suffering, mental anguish and humiliation.

31. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.

Plaintiffs demand relief as set forth below.

COUNT 5 – CONVERSION

Plaintiffs re-allege paragraphs 1-31 and further state:

32. By stealing \$9,400 in cash from the Ketan family, Defendants knowingly converted property that belonged to the Ketan family.

33. This act was inconsistent with the ownership rights of the Keten family, and constituted the common law tort of conversion.

34. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.

Plaintiffs demand relief as set forth below.

COUNT 6 – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Plaintiffs re-allege paragraphs 1-34 and further state:

35. The actions of the Defendants, including but not limited to, their failure to exercise due care, invaded the rights of K.K.K. and Mrs. Keten, who were placed in the zone of danger of physical impact and reasonably feared for their own safety as well as the safety of one another.

36. K.K.K. and Mrs. Keten have suffered severe mental and emotional distress with attendant physical manifestations as a result of the aforesaid shooting. Furthermore, no physical manifestation is necessary in this case because the “unusually disturbing experience” that Plaintiffs have endured assures that their emotional distress is real and severe.

37. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.

Plaintiffs demand relief as set forth below.

COUNT 7 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Plaintiffs re-allege paragraphs 1-37 and further state:

38. The extreme, outrageous, and conscience shocking actions of the Defendants in shooting directly at K.K.K. such that she was splattered with the blood of her own dog were done intentionally or recklessly and caused her severe emotional and mental distress.

39. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.

Plaintiffs demand relief as set forth below.

WHEREFORE, Plaintiffs pray for judgment as follows:

- a. awarding Plaintiffs compensatory damages against Defendants, jointly and severally;
- b. awarding Plaintiffs punitive damages against the Defendants, jointly and severally, which are available on the § 1983 claim against the individual officers as a matter of federal common law, *Smith v. Wade*, 461 U.S. 30 (1983), in an amount to be determined at trial; Plaintiffs also hereby reserve the right to amend the Complaint to add a claim for punitive damages on their state law claims; and
- c. awarding Plaintiffs all of their costs and disbursements, including reasonable attorneys' fees as allowed by law, including 42 U.S.C. § 1988; and
- d. granting such other relief as the Court may deem just and equitable; and
- e. Plaintiffs demand a jury trial.

Dated: Oct. 19, 2011

s/ Paul Applebaum
Paul Applebaum (223098)
Sarah A. Henning (390348)
First National Bank Building
332 Minnesota Street, Suite W-1610
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
11-CV-1520 (DWF/JSM)

I hereby certify that on 11/11/2011, I served, or caused to be served, the following documents:

1. Plaintiff's FIRST AMENDED COMPLAINT AND JURY DEMAND.

I certify, further, that I electronically filed the above listed document with the Clerk of Court by using ECF, which constitutes service on the following ECF participants, pursuant to the ECF procedures for the District of Minnesota:

Attorney Sara J. Lathrop

Dated: November 11, 2011

Respectfully submitted,

s/ Paul Applebaum
Paul Applebaum (223098)
First National Bank Building
332 Minnesota Street, Suite W-1610
St. Paul, Minnesota 55101
(dir) (651) 222-2999
(fax) (651) 223-5179
Attorney for Defendant

**UNITED STATES DISTRICT COURT
for the
DISTRICT OF MINNESOTA**

Roberto Franco, Analese Franco,
Gilbert Castillo, Michael Castillo,
Nancy Castillo, Thomas Bostwick,
R.F., A.F & A.F., minors,

COMPLAINT

v.

State of Minnesota, County of Ramsey,
City of St. Paul, St. Paul Police Department
Shawn Scovill, Steve Anderson, Patrick Chesier,
Craig Gromek, Terry Ecker, Andy Gubash,
Mike Heski, Rick Porras, Joe Robertson,
Jeremiah Simonson, Tommy Booth, Jason Polinski,
And Chris Melton

Jury Trial Requested

STATEMENT OF JURISDICTION

This action arises under 42 U.S.C. §§ 1981 and 1983 and the Fourth and Fourteenth Amendments of the United States Constitution.

STATEMENT OF THE CLAIMS

1. Plaintiffs allege that defendants violated their Constitutional rights against unreasonable search and seizure when they broke into and raided their home on July 13, 2010 and carried out a night-time raid of their home and where they searched and seized plaintiffs and their property at gun point without a proper search warrant.
2. The search warrant specifically named Rafael Ybarra as the intended target suspect. Plaintiff Roberto Franco was not named in the search warrant, nor was any person who lived in the raided house named in the search warrant.
3. There was never a mention of plaintiff, Roberto Franco, in any documents related to the raid search warrant.
4. Plaintiff, Roberto Franco, had never been discussed or considered a suspect by law enforcement, Scovill or any of the defendants directly involved or indirectly involved in

the raid, relative to any alleged involvement by Franco in any distribution of contraband prior to the wrong house raid.

5. Plaintiffs allege that defendant, Shawn Scovill, provided false and misleading information to a Minnesota District Court judge in order to obtain a search warrant. Defendant Scovill lied when he informed the District Court judge who reviewed Scovill's search warrant application that Scovill had obtained information from the confidential informant that the plaintiffs' home was the properly targeted house and that the address and the identity of the individuals who resided therein were the plaintiffs.

6. Plaintiffs allege that defendants negligently violated their U.S. Constitutional and federal statutory rights as detailed below. Alternatively, plaintiffs allege that defendants intentionally violated said rights. Alternatively, plaintiffs allege that defendants' activities were a combination of intentional and negligent acts which caused them grave personal injury and abridged their rights to privacy and such other rights by their illegal and improper invasion of plaintiffs' home.

7. On or about July 13, 2010, officer Shawn Scovill of the Dakota County Drug Task Force and Officers Steve Anderson, Patrick Chesier, Craig Gromek of the St. Paul Police Department, officers Terry Ecker, Andy Gubash, Mike Heski, Rick Porras, Joe Robertson, Jeremiah Simonson, Tommy Booth, and Sgt. Jason Polinski of the Dakota County Drug Task Force, and Agent Chris Melton of the DEA, negligently raided the home of plaintiffs, by raiding the wrong home and physically brutalizing all the above-named occupants of said house.

8. Defendants were attempting to arrest an individual by the name of Rafael Ybarra who actually lived next door to the plaintiffs.

9. Defendants had a search warrant that contained the name of Rafael Ybarra as the named suspect who was wanted under suspicious of distribution of contraband.

10. While in the home of plaintiffs, the defendants learned that the suspect who was named in the search warrant lived in the house next door, at the address of 165 Annapolis East, St. Paul, MN 55107.

11. The house that defendants raided was at the address of 171 Annapolis East, St. Paul, MN 55107.

12. Despite the fact that defendants learned that the suspect did not live at the address raided, defendants remained in the home of plaintiffs and continued searching the home.

13. Defendants, handcuffed all of the inhabitants of the plaintiffs' home except plaintiff Analese Franco who was forced, virtually naked, from her bed onto the floor at gun point by officers of the St. Paul Police Department SWAT team and officers of the St. Paul Police Department.

14. Defendants performed a night-time raid of the plaintiffs' home by breaking down the front storm door and front interior door.

15. Upon forcibly breaching the plaintiffs' home, defendants terrorized the plaintiffs at gun and rifle point.

16. Each plaintiff was forced to the floor at gun and rifle point and handcuffed behind their backs.

17. Defendants shot and killed the family dog and forced the handcuffed children to sit next to the carcass of their dead pet and bloody pet for more than an hour while defendants continued to search the plaintiffs' home.

18. Defendants performed an illegal search of the plaintiffs' home whereupon following significant time spent at searching the plaintiffs' home located a .22 caliber revolver in the lower basement bedroom of plaintiff, Gilbert Castillo.

19. Defendants improperly attributed the possession of said weapon to plaintiff, Roberto Franco and arrested him under Minn. Stat. M. S. 624.713.1(2)

20. Plaintiff Roberto Franco was wrongfully convicted of the alleged offense and is currently incarcerated with the Minnesota Department of Corrections.

21. While plaintiff, Gilbert Castillo, was pushing the family trash receptacle to the curb for early morning trash pick-up, he was attacked by defendants, thrown to the ground, whereupon officers dressed in Army fatigues rushed him with weapons in hand. One member of the St. Paul SWAT team threw Gilbert Castillo to the ground and pounced on him, forcing entire weight of his body upon Gilbert Castillo, rammed his knee into the shoulder blades of plaintiff Gilbert Castillo handcuffed his hands behind his back.

22. Officer St. Police Department SWAT officers broke into the bedroom of plaintiff, Roberto Franco, forced him out of bed, nearly naked out of bed and onto the floor where he was forcibly handcuffed and forced to remain in an awkward, uncomfortable position, hands cuffed behind his back with his weight of over 400 pounds, bearing down on the handcuffs which induced unbearable pain upon plaintiff, Roberto Franco.

23. Plaintiff Analese Franco and her baby were forced from her bed, virtually naked, and onto the floor of her bedroom by armed SWAT officers.

24. Plaintiff Roberto Franco was illegally and improperly searched and arrested.

25. Plaintiff Michael Castillo was forced to the floor and handcuffed at gun-point. Said plaintiff was illegally and improperly searched by defendants.

26. Plaintiff, Thomas Boswick was forced to the floor and handcuffed at gun-point. Said plaintiff was illegally and improperly searched by defendants.

27. Plaintiff, minor R.F. was kicked in the side, handcuffed and searched at gun-point by SPPD SWAT.

28. Plaintiff, minor, A.F., a diabetic, was handcuffed at gun-point and prevented by officer from obtaining and taking her medication, thus induced a diabetic episode as a result of low-blood sugar levels.

29. Plaintiff, Nancy Castillo, was forced to the floor at gun-point and handcuffed by officer SWAT and other defendants.

30. Defendants improperly and illegally remained in the home of the plaintiffs searching and seizing items despite the fact that they had learned that they had raided the wrong home.

31. Defendant, Shawn Scovill intentionally perjured himself in his sworn testimony on the witness stand at the suppression hearing and at the trial of plaintiff, Roberto Franco.

32. Defendant, Shawn Scovill intentionally misrepresented the facts of the criminal case against Roberto Franco in all documents following the arrest of, plaintiff Roberto Franco.

33. Defendant Shawn Scovill intentionally misrepresented the facts in the State's criminal against plaintiff Gilbert Castillo when he said that Gilbert Castillo did not state that the confiscated weapon belonged to Gilbert Castillo.

34. Defendant Shawn Scovill perjured himself when he testified in the suppression hearing and at the trial of plaintiff Roberto Franco that Scovill had received a text message from the confidential informant which stated the address of the house to be raided was the house address that Scovill had placed on the search warrant.

35. Defendants had identified and raided the wrong house.

36. The search warrant was defective in that it did not provide a description of the targeted house as required.

37. Defendant Scovill was the officer who directed, supervised and orchestrated the raid of plaintiffs' home.

38. The search warrant was defective in that Scovill did not provide the required independent corroboration of the allegations that drug dealings were occurring in the target house.

39. Scovill perjured himself when he testified he and his officers had observed illegal drug dealings occurring at plaintiffs' home.

40. Scovill perjured himself when he testified that he had questioned plaintiff, Gilbert Castillo and that Gilbert Castillo did not claim ownership of the weapon in question.

41. Scovill perjured himself after plaintiff, Franco's attorney impeached when Scovill retook the witnessed stand as a rebuttal witness and changed the testimony that he provided on direct examination as to critical evidence for the length of time and the content of his interrogation of plaintiffs Roberto Franco and Gilbert Castillo.

42. Officer Scovill attempted to bribe plaintiff, Franco, to agree to not pursue civil redress against defendants by assuring him that if Franco would not pursue legal redress, he would not charge Franco with any crime.

43. As a direct result of defendant Scovill's perjured testimony, plaintiff, Roberto Franco, was illegally and improperly convicted of a felony for which he is currently incarcerated pending appeal before the Minnesota Supreme Court.

44. As a direct result of defendant Scovill's perjured testimony, plaintiff, Gilbert Castillo was improperly convicted of possession of contraband.

45. As a result of defendants' actions, plaintiffs, R.F., A.F., and A.F., have suffered traumatic emotional and other permanent personal injuries that require on-going therapy.

46. Each of the named plaintiffs have suffered personal injuries including emotional and psychological injuries as a result of the actions of defendants.

REQUEST FOR RELIEF

Plaintiffs pray for joint and several relief in a sum in excess of ten million dollars, (\$10,000,000.00), for breach of their Constitutional rights, together with attorneys fees, costs and disbursements and any other relief that the Court deems just and appropriate.

Plaintiffs request twenty million dollars (\$20,000,000.00) in punitive damages.

Dated: July 12, 2012

CONNER MCALISTER SELMER, LLC.

/s/Scott Selmer
Lic. No. 156024
Attorneys for Plaintiffs
P.O. Box 385091
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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
11-CV-1520 (DWF/JSM)

James Keten and Aisha Keten,
individually and o/b/o minor
child K.K.K.,

Plaintiffs,

**SECOND AMENDED
COMPLAINT**

v.

JURY TRIAL DEMANDED

Sergeants Steven Mosey,
Mark Osland and Kendal Chambers,
and Officers Aaron Morrison,
Chad Fuchs, Steven Lynch,
Todd Babekuhl, Lucas Peterson,
Scott Creighton, Chris Garbisch,
Nick Rowe, Mark Kaspszak,
Joshua Rick, Peter Rud,
George Peltz, and Mark Beaupre, in their
individual and official capacities,
and the City of Minneapolis,

Defendants.

Plaintiffs, James and Aisha Keten, individually and on behalf of their minor child, K.K.K., state and allege as follows:

1. This is an action for money damages for injuries sustained by Plaintiffs as a result of the violations of their constitutional rights by the above-mentioned on-duty Police Officers ("Defendants"). The conduct of the Defendants violated Plaintiffs' well-settled civil rights while acting under the color of state law. Defendants' conduct also violated the common laws of the State of Minnesota.

2. Plaintiffs bring this action pursuant to 42 U.S.C. §§ 1983 and 1988, the Fourth and Fourteenth Amendments to the United States Constitution and 28 U.S.C. §§ 1331 and 1343(3).

PARTIES AND VENUE

3. Because all of the facts complained of arose in Minneapolis, Hennepin County, Minnesota, this action properly lies in the District of Minnesota.

4. At all times relevant to this action, Plaintiffs were and are citizens of the United States and residents of Hennepin County, Minnesota. Plaintiffs James and Aisha Keten are of the age of majority. At all times relevant to this action, Defendants were duly appointed police officers of the City of Minneapolis.

FACTUAL ALLEGATIONS

5. At all times relevant to this lawsuit, Plaintiffs Mr. and Mrs. Keten were tenants of the lower level of a home located at 2504 Humboldt Avenue North, #1, Minneapolis, Minnesota.

6. On the morning of April 13, 2011, Mr. and Mrs. Keten were at home with their two daughters, K.K.K. and N.Z.K., as well as their four dogs.

7. K.K.K. was in the kitchen eating breakfast while Mrs. Keten got ready for work. N.Z.K. was elsewhere in the home. Mrs. Keten had recently let one of the dogs outside, so the front door was unlocked.

8. Defendants, who were at the Keten's home to execute a search warrant, barged through the Keten's front door without warning and began firing their 9mm handguns. Defendants did not "knock and announce," as required under the warrant, nor did they give any warning that they were entering the Keten family's home.

9. One of the Keten's dogs, Kano, was laying in the front living room when Defendants entered. Before the dog had time to stand up, Defendant Morrison shot and killed the dog, splattering blood all over the children's "Dora the Explorer" book that sat nearby. Kano did not bark nor did he display any aggression towards Defendants. The first thing the Ketens heard that morning when Defendants came through the door was the sound of gunfire killing Kano.

10. At the same time, other Defendants entered the kitchen where three-year-old K.K.K., was eating breakfast at the kitchen table, while Mrs. Keten stood nearby. Defendant Fuchs fired multiple hollow point rounds towards the kitchen table, killing another of the family's dogs, Remy, and splattering blood all over K.K.K and the kitchen walls and floor.

11. Remy had not barked, charged or otherwise behaved aggressively towards the Defendants before she was shot dead. Defendants had a clear view of K.K.K. as she sat next to Remy at the kitchen table.

12. Defendant Fuchs was using hollow-point 9mm ammunition as he fired indiscriminately into the kitchen. One of these hollow-point rounds was lodged in the wall directly behind where K.K.K. sat, while several more entered the floor directly in front of the young girl.

13. Mrs. Keten was put in grave fear for her safety as well as that of her daughter by the actions of the Defendants. K.K.K. also feared for her own safety as well as that of her family members.

14. After killing the two dogs and nearly killing one child, Defendants began to beat Mr. Keten about his back, neck, head, and face as he lay face down on the living room floor.

15. As Defendants beat Mr. Keten while he lay compliant on the floor of his own living room, Defendants repeatedly told him to "Shut the fuck up N****r!"

16. Defendants zip-tied Mr. Keten's hands behind his back, pulled his sweatshirt over his head, and continued to beat and kick him. Mr. Keten begged Defendants to stop kicking him in the face, to which one of the Defendants replied, "We do what the fuck we want N****r," while continuing to step on Mr. Keten's face.

17. Defendants ransacked the house, destroying much of the Keten family's personal property. Defendants found no evidence of criminal activity within the house, but they did find and steal \$9,400 in cash from Mr. and Mrs. Keten. Defendants did not report the seizure of this money on the receipt for the search warrant.

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19. Mr. Keten was treated for his injuries. K.K.K. is being counseled because of the conduct of the Defendants. Three year old K.K.K. now asks her father several times each day to make sure the door is locked.

20. The Keten family, especially K.K.K., live in a state of constant fear that Defendants will return to the house and kill them like they shot Remy and Kano. Ultimately, the Ketens moved as a result of this incident.

COUNT 1 – FOURTH AMENDMENT VIOLATIONS OF 42 U.S.C. 1983

Plaintiffs re-allege paragraphs 1-20 and further state:

21. By entering without knocking and announcing, shooting indiscriminately into Plaintiffs' home and directly at K.K.K., by beating and kicking Mr. Keten, and by seizing \$9400

in cash without a lawful purpose, Defendants acted intentionally to deprive Plaintiffs of their right to be free from excessive and unjustified deadly force. These rights are secured to Plaintiffs by the Fourth and Fourteenth Amendments to the Constitution of the United States.

22. Defendants also entered the home without a valid warrant, searched vehicles which were not named in the warrant, and stole \$9,400 in cash from the Ketens, in violation of the Fourth Amendment's strictures against unreasonable searches and seizures.

23. As a direct and proximate result of Defendants' excessive use of force, Plaintiffs have suffered physical injury, pain and suffering, mental anguish and humiliation.

Plaintiffs demand relief as set forth below.

COUNT 2 – FOURTEENTH AMENDMENT VIOLATIONS OF 42 U.S.C. 1983

Plaintiffs re-allege paragraphs 1-23 and further state:

24. By firing multiple 9mm rounds directly at K.K.K. while she ate her breakfast, Defendants engaged in conscience shocking behavior that interfered with her fundamental rights in violation of the Fourteenth Amendment.

25. As a direct and proximate result of the Defendants' conduct, which constitutes substantive due process violations, K.K.K. has been forced to endure severe mental pain and suffering for which she continues to undergo psychiatric counseling.

Plaintiffs demand relief as set forth below.

COUNT 3 – BATTERY

Plaintiffs re-allege paragraphs 1-25 and further state:

26. By firing indiscriminately into Plaintiffs' home and beating and kicking Mr. Keten while he was compliant, Defendants used more physical force than was reasonable and necessary

under the circumstances. Such unwanted contact and excessive force constitutes common law battery.

27. As a direct and proximate result of Defendants' battery, Plaintiffs suffered physical injury, pain and suffering, mental anguish and humiliation.

28. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.

Plaintiffs demand relief as set forth below.

COUNT 4 – ASSAULT

Plaintiffs re-allege paragraphs 1-28 and further state:

29. Defendants, by their unwarranted shooting into Plaintiffs' home and their beating of Mr. Keten, caused Plaintiffs to be in reasonable fear of imminent great bodily harm and death. These actions and the display of force by Defendants constitute common law assault.

30. As a direct and proximate result of Defendants' illegal entry, assault, and battery, Plaintiffs suffered physical injury, pain and suffering, mental anguish and humiliation.

31. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.

Plaintiffs demand relief as set forth below.

COUNT 5 – CONVERSION

Plaintiffs re-allege paragraphs 1-31 and further state:

32. By stealing \$9,400 in cash from the Keten family, Defendants knowingly converted property that belonged to the Keten family.

33. This act was inconsistent with the ownership rights of the Keten family, and constituted the common law tort of conversion.

34. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.

Plaintiffs demand relief as set forth below.

COUNT 6 – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Plaintiffs re-allege paragraphs 1-34 and further state:

35. The actions of the Defendants, including but not limited to, their failure to exercise due care, invaded the rights of K.K.K. and Mrs. Keten, who were placed in the zone of danger of physical impact and reasonably feared for their own safety as well as the safety of one another.

36. K.K.K. and Mrs. Keten have suffered severe mental and emotional distress with attendant physical manifestations as a result of the aforesaid shooting. Furthermore, no physical manifestation is necessary in this case because the “unusually disturbing experience” that Plaintiffs have endured assures that their emotional distress is real and severe.

37. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.

Plaintiffs demand relief as set forth below.

COUNT 7 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Plaintiffs re-allege paragraphs 1-37 and further state:

38. The extreme, outrageous, and conscience shocking actions of the Defendants in shooting directly at K.K.K. such that she was splattered with the blood of her own dog were done intentionally or recklessly and caused her severe emotional and mental distress.

39. Defendant City of Minneapolis is jointly and severally liable for the actions of the police officers under the doctrines of agency and *respondeat superior*.

Plaintiffs demand relief as set forth below.

WHEREFORE, Plaintiffs pray for judgment as follows:

- a. awarding Plaintiffs compensatory damages against Defendants, jointly and severally;
- b. awarding Plaintiffs punitive damages against the individual Defendants, jointly and severally, on Counts 1, 2, 3, 4, 6, and 7, in an amount to be determined at trial; and
- c. awarding Plaintiffs all of their costs and disbursements, including reasonable attorneys' fees as allowed by law, including 42 U.S.C. § 1988; and
- d. granting such other relief as the Court may deem just and equitable; and
- e. Plaintiffs demand a jury trial.

Dated: July 26, 2012.

s/ Paul Applebaum
Paul Applebaum (223098)
Andrew M. Irlbeck (392626)
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

James Keten and Aisha Keten,
individually and o/b/o minor
child, K.K.K.,

Civil No. 11-1520 (DWF/JSM)

Plaintiffs,

v.

**MEMORANDUM
OPINION AND ORDER**

Sergeant Steven Mosey, and
Officers Aaron Morrison, Chad
Fuchs, Steven Lynch, Chris Garbisch,
and George Peltz, in their individual
and official capacities, and
the City of Minneapolis,

Defendants.

Andrew M. Irlbeck, Esq., and Paul Applebaum, Esq., counsel for Plaintiffs.

Andrea Kloehn Naef, Sara J. Lathrop, Timothy S. Skarda, Assistant City Attorneys,
Minneapolis City Attorney's Office, counsel for Defendants.

INTRODUCTION

This matter is before the Court on a Motion for Partial Summary Judgment brought by Defendants City of Minneapolis (the "City"), Sergeant Steven Mosey ("Sergeant Mosey"), Officers Aaron Morrison ("Officer Morrison"), Chad Fuchs ("Officer Fuchs"), Steven Lynch ("Officer Lynch"), Chris Garbisch ("Officer Garbisch"), and George Peltz ("Officer Peltz") (together, "Defendants"). (Doc. No. 28.) For the reasons set forth below, Defendants' motion is granted in part and denied in part.

BACKGROUND

The Minneapolis Police Department requested and received a warrant to search the residence of Plaintiff James Keten (“J. Keten”). (Doc. No. 33, Lynch Aff. ¶¶ 2, 4-8.) The warrant was a “knock and announce” warrant, which requires police to knock and announce their presence prior to making entry. (Doc. No. 31, Lathrop Aff. ¶ 2, Ex. 1 (Lynch Dep.) at 25.) J. Keten is the brother of Lamont Keten, an identified suspect in a shooting that occurred in a North Minneapolis home on April 3, 2011. (Lynch Aff. ¶¶ 3, 4.) The police learned that, at the time of the shooting, Lamont Keten was staying at J. Keten’s home. (*Id.* ¶ 4.) The search warrant sought to recover the assault rifle used in the shooting. (*Id.*; Lynch Dep. at 17; Lathrop Aff. ¶ 3, Ex. 2 (Mosey Dep.) at 16.) During the warrant’s execution, Lamont Keten remained in custody.

Sergeant Mosey led the Minneapolis Police Department Special Weapons and Tactics (“SWAT”) team, which consisted in part of Defendants Sergeant Mosey and Officers Morrison, Fuchs, Garbisch, and Lynch. (Lathrop Aff. ¶ 4, Ex. 3 (Warrant Service Log).)¹ Prior to the execution of the warrant, Officer Lynch briefed the SWAT team on the context in which the warrant arose. (Lynch Dep. at 27; Lynch Aff. ¶¶ 13-14; Mosey Dep. at 16, 43.) He also informed the SWAT team that one item sought was an assault rifle used in the April 3, 2011 shooting, that small children lived at the residence

¹ The Warrant Service Log does not indicate that Officer Garbisch was part of the team, but the parties do not dispute that he was there.

to be searched, and that there were potentially four aggressive Pit Bull dogs at the location. (Lynch Aff. ¶¶ 13-14.)

On the morning of April 13, 2011, J. Keten, his wife Plaintiff Aisha Keten (“A. Keten”), and their two young children, K.K. (age three) and Z.K. (infant), were present in the Keten home. (Lathrop Aff. ¶ 5, Ex. 4 (J. Keten Dep.) at 23-25; Lathrop Aff. ¶ 6, Ex. 5 (A. Keten Dep.) at 27-28.) J. Keten was in the living room, K.K. was at the kitchen table eating cereal, Z.K. was sleeping in a bedroom, and A. Keten was in the bathroom getting ready for work. (*Id.*) The SWAT team arrived around 9:00 a.m. to execute a knock and announce, daytime warrant. (Lynch Dep. at 25; J. Keten Dep. at 18; A. Keten Dep. at 26.) The SWAT team entered through a slightly ajar front door, which opens directly into the living room. (Mosey Dep. at 19; Lathrop Aff. ¶ 9, Ex. 8 (Morrison Dep.) at 23.) Officer Morrison announced “Police!! Search warrant!!” (Morrison Dep. at 23.) Upon entering through the living room, Officer Morrison shot one of the Keten’s dogs, a 60-pound Pit Bull-mix named “Kano.” (Morrison Dep. at 23; J. Keten Dep. at 28-30.) Kano had been walking near J. Keten in the living room when the police entered. (J. Keten Dep. at 36-37.) Officer Morrison testified that the dog charged him. (Morrison Dep. at 23.) J. Keten testified that the dog was shot immediately and did not “have a chance to look” before he was shot. (J. Keten Dep. at 37.) Officers Morrison and Garbisch took J. Keten to the ground. (J. Keten Dep. at 44.) J. Keten asserts that the officers threw a pillow and sweatshirt over his head and beat him by kicking and stomping on him, and that they yelled racial slurs. (J. Keten Dep. at 44-46, 50.)

Officer Fuchs entered the home and went into the bathroom/kitchen area. (Mosey Dep. at 30.) Officer Fuchs passed A. Keten, who was getting ready for work in the bathroom, and then Officer Fuchs moved to the kitchen where K.K. was eating breakfast at the table. (A. Keten Dep. at 27-28, 148-50.) Plaintiffs allege that Officer Fuchs fired several shots into the kitchen, hitting the floor several feet in front of the table, hitting the wall behind a kitchen chair, and shooting and killing another dog, a 40-pound German Shepard and Pit Bull-mix named “Remy.” (J. Keten Dep. at 77-78; Lathrop Aff. ¶ 8, Ex. 7 (K.K. Dep.) at 7-11; A. Keten Dep. at 148-49.) At the time, Remy was sitting near the feet of K.K. as she ate cereal at the kitchen table. (K.K. Dep. at 7-11; A. Keten Dep. at 148.) Due to her close proximity to Remy, blood splattered on K.K.’s pajamas. (A. Keten Dep. at 36.) K.K. did not move after the officer shot Remy, but remained motionless in her seat. (A. Keten Dep. at 148, 151.) K.K. later testified that she was afraid and thought that “[t]hey would shoot me.” (K.K. Dep. at 7.)

Officer Fuchs claims that he believed the dog to be threatening, while K.K. and her mother stated that Remy did not bark or growl at the officer, but merely sat begging for K.K.’s food. (Doc. No. 39, Fuchs Decl. ¶ 4; A. Keten Dep. at 143-152.) After hearing the first round of gunfire from the living room, A. Keten attempted to rush to the kitchen to grab K.K., but officers kept her back in the bathroom. (A. Keten Dep. at 35, 37, 42, 55.)

The raid lasted less than ten minutes. (Mosey Dep. at 36.) Minneapolis Police Officers from the investigative team then entered the Keten home to conduct the search. (*Id.* at 35.) Defendants did not find a gun or any ammunition. (Irlbeck Aff. ¶ 13, Ex. 12.)

Plaintiffs assert that Defendants destroyed or damaged many family belongings, including dressers, beds, window blinds, speakers, stereo equipment, carpet, and the kitchen walls and floors. (A. Keten Dep. at 60-61.)

Plaintiffs allege that they have suffered damages as a result of the search. J. Keten claims that he has suffered a bruised back, sore neck, and emotional distress. (J. Keten Dep. at 115-16.) J. Keten went to the emergency room at North Memorial for treatment roughly twelve hours after the search, where he reported back pain and a headache. (*Id.*; Lathrop Aff. ¶ 10, Ex. 9 (J. Keten Medical Records) at 3.) At the emergency room, there were no “obvious bruises to document photographically,” a spinal X-ray found “normal alignment of the lumbar spine” and “no acute fracture,” and he was prescribed pain medication and told to follow up with his primary physician in one week. (*Id.* at 6-7.) A. Keten claims that her blood pressure has increased since the incident. (A. Keten Dep. at 104.) She missed work due to the incident and suffered some lost wages and bonuses. (*Id.* at 88-92.) K.K. has seen a family therapist for counseling roughly once every 30-45 days. (J. Keten Dep. at 119-20; A. Keten Dep. at 94-96.) K.K. has been diagnosed with Post-Traumatic Stress Disorder (“PTSD”). (Irlbeck Aff. ¶¶ 2, 3, Exs. 1, 2.)

In their Amended Complaint, Plaintiffs assert the following causes of action:

(1) unreasonable search and seizure, including claims for excessive force against Officer Fuchs for shooting into the kitchen, and against Officers Morrison and Garbisch for use of force against J. Keten; (2) substantive due process violation against Officers Lynch, Fuchs, Garbisch, Morrison, and Sergeant Mosey, for unreasonable shooting in the kitchen; (3) battery; (4) assault; (5) conversion; (6) negligent infliction of emotional

distress; and (7) intentional infliction of emotional distress. (Doc. No. 23, Second Am. Compl.)² Defendants now move for partial summary judgment.

DISCUSSION

I. Legal Standard

Summary judgment is proper if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The Court must view the evidence and the inferences that may be reasonably drawn from the evidence in the light most favorable to the nonmoving party. *Enter. Bank v. Magna Bank of Mo.*, 92 F.3d 743, 747 (8th Cir. 1996). However, as the Supreme Court has stated, “[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy, and inexpensive determination of every action.’” *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1).

The moving party bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Enter. Bank*, 92 F.3d at 747. The nonmoving party must demonstrate the existence of specific facts in the record that create a genuine issue for trial. *Krenik v. County of Le Sueur*, 47 F.3d 953, 957 (8th Cir. 1995). A party opposing a properly supported motion for

² Plaintiffs stipulated to voluntarily dismiss their conversion claim, as well as claims asserted against several originally named defendants. (Doc. No. 26.) The remaining claims are set forth in chart form in the parties’ stipulation. (*Id.*) The Court did not include all of the facts of this case in the Background section, as some facts are only relevant to claims not presently before the Court.

summary judgment “may not rest upon mere allegations or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986).

II. Excessive Force Under 42 U.S.C. § 1983

Defendants argue that both K.K.’s excessive force claim against Officer Fuchs and J. Keten’s excessive force claim against Officers Morrison and Garbisch fail as a matter of law.

A. K.K.’s Claim Against Officer Fuchs

Plaintiffs assert that Officer Fuchs used excessive force when he fired his weapon into the kitchen where K.K. was eating breakfast. Defendants argue that this claim fails because in shooting the dog in the kitchen, Officer Fuchs did not seize K.K. under the Fourth Amendment.

The Fourth Amendment prohibits unreasonable seizures. *Graham v. Connor*, 490 U.S. 386, 394-95 (1989). Here, Defendants argue that Plaintiffs’ excessive force claim fails as a matter of law because there was no seizure of K.K. In particular, Defendants argue that an officer must have a subjective intent to seize a person to be liable for an unreasonable seizure under the Fourth Amendment. Plaintiffs assert that the excessive force claim survives summary judgment because Officer Fuchs did not act with the intent to seize the dog, but rather to seize K.K. In support, Plaintiffs submit evidence that the dog was not acting aggressively and was sitting at K.K.’s feet when Officer Fuchs shot the dog. Plaintiffs argue that because the dog was not aggressive, Officer Fuchs had no

legitimate reason to intend to seize the dog and that the use of force constitutes a seizure of K.K. Plaintiffs also argue that K.K. was seized for Fourth Amendment purposes because a reasonable person would have interpreted Officer Fuchs' actions as a seizure.

A Fourth Amendment seizure occurs when an officer, "by means of physical force or show of authority, terminates or restrains [an individual's] freedom of movement, *through means intentionally applied.*" *Brendlin v. Cal.*, 551 U.S. 249, 254 (2007) (internal quotations and citations omitted) (emphasis in original); *see also Gardner v. Bd. of Police Comm'rs*, 641 F.3d 947, 951 (8th Cir. 2011). Thus, an "unintended person . . . [may be] the object of the detention," so long as the detention is "willful" and not merely the consequence of "an unknowing act." *Brendlin*, 551 U.S. at 256. "The intent that counts under the Fourth Amendment is the 'intent [that] has been conveyed to the person confronted,' and the criterion of willful restriction on freedom of movement is no invitation to look to subjective intent when determining who is seized." *Id.* at 260-61 (internal citations omitted). A seizure occurs if "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980); *see also California v. Hodari*, 499 U.S. 621, 628 (1991) (noting that the test in *Mendenhall* has been adopted by the Supreme Court in later cases).

Here, viewing the facts in the light most favorable to Plaintiffs, and therefore accepting that the dog in the kitchen was not acting aggressively, a reasonable juror could conclude that by firing multiple shots into the kitchen where K.K. sat, Officer Fuchs seized K.K. More specifically, a reasonable juror could conclude that Officer Fuchs

willfully fired his gun so as to make K.K. reasonably believe that she was not free to leave.

Where there has been a seizure, the Court evaluates whether an officer's actions constitute excessive force under an objective-reasonableness test. *Graham*, 460 U.S. at 397. In determining whether the use of force is "reasonable" under the Fourth Amendment, a court must balance "the nature and quality of the intrusion on the individual's Fourth Amendment interests" against the government's interests at stake. *Id.* at 396 (citation omitted). The reasonableness of the use of force must be judged from the "perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *See id.* The proper application of the Fourth Amendment "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* The question is whether the "totality of the circumstances" justify a particular seizure. *Id.* (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)).

Here, Plaintiffs have put forth evidence that the Defendant Officers, including Officer Fuchs, entered the Keten's residence without knocking and announcing (despite executing a "knock and announce" warrant), and then fired multiple shots into a small kitchen in close proximity to where a three-year-old sat eating breakfast with her dog nearby. Again, viewing the facts in the light most favorable to Plaintiffs, and therefore

accepting that the dog in the kitchen was not acting aggressively, a reasonable juror could conclude that Officer Fuchs' actions were objectively unreasonable.³

B. J. Keten's Excessive Force Claim

Defendants argue that Officers Morrison and Garbisch are entitled to summary judgment because, at the time of the incident, it was not clearly established that Officers Morrison and Garbisch violated J. Keten's constitutional right by applying force because the force only caused *de minimis* injury. In support, Defendants argue that prior to *Chambers v. Pennycook*, 641 F.3d 898, 901, 906 (8th Cir. 2011), it was not clearly established "whether an excessive force claim requires some minimum level of injury." 641 F.3d at 904, 908. Here, Plaintiffs assert that J. Keten sustained bruising to his neck and back, lasting pain in his neck, back and head, and a decreased range of motion in the lumbar region of his spine. Plaintiffs point out that J. Keten was treated at the hospital for his injuries on the day of the incident. For purposes of its qualified immunity

³ Defendants also argue, in the alternative, that Officer Fuchs is entitled to qualified immunity on the excessive force claim. The doctrine of qualified immunity protects state actors from civil liability when their "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The defense provides "ample room for mistaken judgments" as it protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341, 343 (1986). To overcome the defense of qualified immunity, a plaintiff must show that: (1) the facts, viewed in the light most favorable to the plaintiff, demonstrate the deprivation of a constitutional or statutory right; and (2) the right was clearly established at the time of the deprivation. *Parrish v. Ball*, 594 F.3d 993, 1001 (8th Cir. 2010) (citation omitted).

As discussed above, a reasonable juror could conclude that Officer Fuchs' actions were objectively unreasonable, and therefore, that he violated K.K.'s Fourth Amendment rights. In addition, the Court concludes that these rights were clearly established at the time of the deprivation. Thus, Officer Fuchs is not entitled to qualified immunity.

analysis, the Court concludes that this injury is not *de minimis* as a matter of law. *See, e.g., Copeland v. Locke*, 613 F.3d 875, 881-82 (8th Cir. 2010) (finding lacerations from handcuffs and an injury to the knee not *de minimis*). Plaintiffs have pointed to sufficient evidence of actual injury to overcome Defendants’ assertions of qualified immunity.

III. Substantive Due Process

Plaintiffs also assert a Fourteenth Amendment substantive due process claim against Officers Lynch, Fuchs, Garbisch, Morrison, and Sergeant Mosey. Specifically, Plaintiffs allege that by firing multiple rounds directly into the kitchen while K.K. ate her breakfast, Defendants engaged in “conscience-shocking” behavior. (Sec. Am. Compl. ¶ 24.) Defendants move for summary judgment on this claim, arguing that: (1) Officer Fuchs was not inspired by malice or sadism when he shot the dog in the kitchen; and (2) Officers Lynch, Garbisch, Morrison, and Mosey did not fire their weapons into the kitchen.⁴

Plaintiffs do not dispute that it was Officer Fuchs who fired his weapon into the kitchen. Because there is no evidence that Officers Lynch, Garbisch, Morrison, or Sergeant Mosey fired their weapons near K.K., Plaintiffs’ substantive due process claim against them fails as a matter of law.

⁴ To establish a substantive due process violation, K.K. must show that Defendants’ conduct: (1) was “conscience shocking”; and (2) violated “one or more fundamental rights that are deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Terrell v. Larson*, 396 F.3d 975, 978 n.1 (8th Cir. 2005) (quotations omitted).

Plaintiffs’ substantive due process claim, as it is asserted against Officer Fuchs, is based on the same facts that support Plaintiffs’ Fourth Amendment excessive force claim against Officer Fuchs. Excessive force claims must be analyzed under the Fourth Amendment’s “objective reasonableness standard.” *Graham*, 490 U.S. at 395 (holding that “all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process’ approach”) (emphasis in original). Therefore, Plaintiffs cannot base their substantive due process claim on their alleged excessive-force claims, and Plaintiffs’ substantive due process claim, as asserted against Officer Fuchs, fails as a matter of law. *See, e.g., Smithson v. Aldrich*, 235 F.3d 1058, 1064 (8th Cir. 2000).

Accordingly, Defendants are entitled to summary judgment on Plaintiffs’ substantive due process claim.

IV. Negligent and Intentional Infliction of Emotional Distress

K.K. asserts a claim for intentional infliction of emotional distress (“IIED”); and both K.K. and A. Keten assert claims for negligent infliction of emotional distress (“NIED”).

Under Minnesota law, there are four elements for an IIED claim: (1) the conduct must be extreme and outrageous; (2) the conduct must be intentional or reckless; (3) the conduct must cause emotional distress; and (4) the distress must be severe. *Hubbard v. United Press Int’l, Inc.*, 330 N.W.2d 428, 438-39 (Minn. 1983) (citing Restatement (Second) of Torts § 46(1) (1965)).

To establish a claim for NIED under Minnesota law, a plaintiff must prove the four elements of a negligence claim-duty, breach, injury, and causation. *Engler v. Ill. Farmers Ins. Co.*, 706 N.W.2d 764, 767 (Minn. 2005). In addition, a plaintiff claiming NIED must establish that he or she: (1) was within a zone of danger of physical impact; (2) reasonably feared for his or her own safety; and (3) suffered severe emotional distress with attendant physical manifestations. *Id.* The physical manifestation requirement “is designed to assure the genuineness of the emotional distress.” *Silberstein v. Cordie*, 474 N.W.2d 850, 857 (Minn. Ct. App.1991).

A. K.K.’s Claims

K.K. asserts a NIED claim against Officers Fuchs, Morrison, Garbisch, Lynch, Sergeant Mosey, and the City of Minneapolis. Defendants assert that they are entitled to summary judgment on this claim because K.K. has not presented evidence of an “attendant physical manifestation.” Plaintiffs dispute Defendants’ argument and assert that there is evidence in the record that K.K. has somatization, which could be directly related to symptoms of PTSD. (Irbeck Aff. ¶ 3, Ex. 2 at 6.) Viewing the evidence in the light most favorable to Plaintiffs, the Court finds that there are genuine issues of material fact with respect to whether Plaintiffs have established the necessary element of an attendant physical manifestation of severe emotional distress. Given this, the Court denies Defendants’ motion with respect to the K.K.’s NIED claim.

K.K. also asserts a claim for IIED against Officers Fuchs, Garbisch, Morrison, Lynch, Sergeant Mosey, and the City of Minneapolis. Defendants move for summary judgment insofar as the claims are asserted against Officers Garbisch, Morrison, Lynch

and Sergeant Mosey. Specifically, Defendants argue that there is no evidence that these officers intended to cause K.K. severe emotional distress, or that they proceeded with the knowledge that it was substantially certain, or highly probable, that severe emotional distress would occur. In support, Defendants point out that Officers Garbisch, Morrison, Lynch, and Sergeant Mosey did not fire their weapons into the kitchen. The Court agrees and concludes that Officers Garbisch, Morrison, Lynch, and Sergeant Mosey are entitled to summary judgment on K.K.'s IIED claim.

B. A. Keten's Claim

A. Keten also asserts a NIED claim against Officers Fuchs, Garbisch, Morrison, Lynch, Sergeant Mosey, and the City of Minneapolis for the allegedly unreasonable shooting in the kitchen and the alleged use of excessive force on J. Keten. A plaintiff may recover damages for distress caused by fearing for another person's safety or by witnessing serious injury to another person if the plaintiff can show: (1) she was in the zone of danger of physical impact; (2) she had an objectively reasonable fear for her own safety; (3) she had severe emotional distress with attendant physical manifestations; and (4) she stands in a close relationship to the third-party victim. *Engler*, 706 N.W.2d at 700-71. In addition, the plaintiff must show that the negligent conduct caused serious bodily injury to the third-party victim. *Id.*

Defendants argue that this claim fails because A. Keten was not in the zone of danger, cannot establish that she had an objectively reasonable fear for her own safety, and because neither J. Keten nor K.K. suffered "serious bodily injury." With respect to the issue of whether there was a "serious bodily injury" to either K.K. or J. Keten,

Plaintiffs respond that K.K. suffers from PTSD with somatization and J. Keten suffered “actual injury.” Even accepting these assertions as true, Plaintiffs have not made any compelling argument or showing that either of these injuries constitutes “serious bodily injury.” Accordingly, Defendants are entitled to summary judgment on A. Keten’s claim for NIED.

CONCLUSION

For the reasons discussed above, **IT IS HEREBY ORDERED** that Defendants’ Motion for Partial Summary Judgment (Doc. No. [28]) is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. Count Two (Substantive Due Process) of Plaintiffs’ Second Amended Complaint (Doc. No. [23]) is **DISMISSED WITH PREJUDICE**.
2. Count Six (Intentional Infliction of Emotional Distress) of Plaintiffs’ Second Amended Complaint (Doc. No. [23]) is **DISMISSED WITH PREJUDICE** insofar as it is asserted against Officers Garbisch, Morrison, Lynch, and Sergeant Mosey.
3. Count Six (Negligent Infliction of Emotional Distress) of Plaintiffs’ Second Amended Complaint (Doc. No. [23]) is **DISMISSED WITH PREJUDICE** insofar as it is asserted by Aisha Keten.
4. All other disputed claims remain for trial.

Dated: March 8, 2013

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

CIVIL MOTION HEARING

James Keten, et al.,

Plaintiffs,

v.

Does 1-15, et al.,

Defendants.

COURT MINUTES

BEFORE: Donovan W. Frank
U.S. District Judge

Case No: CV 11-1520 DWF/JSM
Date: April 12, 2013
Court Reporter: Jeanne Anderson
Courthouse: St. Paul
Courtroom: Chambers
Time Commenced: 3:00 p.m.
Time Concluded: 4:00 p.m.
Time in Court: 1 Hour

Hearing on: **Motion for Approval of Minor Settlement (Doc. No. 50)**

APPEARANCES:

Plaintiff: Paul Applebaum, Andrew Irlbeck, Elizabeth Meske
Defendant: Andrea Naef

PROCEEDINGS:

- ☐ Plaintiff's Witnesses:
- ☐ Plaintiff Exhibits:
- ☐ Defendant's Witnesses:
- ☐ Defendant's Exhibits:

****IT IS ORDERED:**

- ☒ **Submitted** ☐ **Sustained** ☐ **Overruled**
- ☐ Brief time set:
- ☒ Written order forthcoming.

s/B. Schaffer
Courtroom Deputy

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James Keten and Aisha Keten,
individually and o/b/o minor child,
K.K.K.,

11-cv-1520 (DWF/JSM)

Plaintiffs,

v.

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

City of Minneapolis,

Defendant.

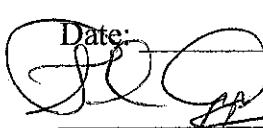
The parties, by and through their undersigned attorneys, hereby stipulate that the Court may dismiss with prejudice, and on the merits, Plaintiffs' Second Amended Complaint, and all claims asserted by Plaintiffs in this matter, without costs to any party.

Date:

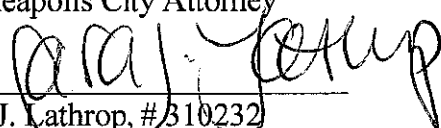
4/29/13

Date:

4-30-13


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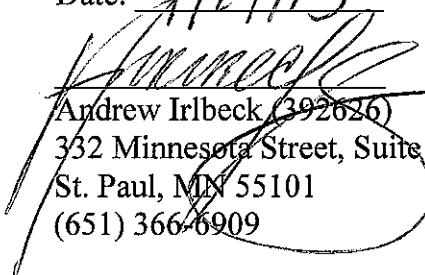
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

James Keten and Aisha Keten,
individually and o/b/o minor child,
K.K.K.,

Civil No. 11-1520 (DWF/JSM)

Plaintiffs,

v.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

Sergeant Steven Mosey,
and Officers Aaron Morrison,
Chad Fuchs, Steven Lynch,
Chris Garbisch, and George Peltz,
in their individual and official capacities,
and the City of Minneapolis,

Defendants.

Pursuant to the parties' Stipulation of Dismissal With Prejudice filed on May 8,
2013, (Doc. No. [57]),

IT IS HEREBY ORDERED that Plaintiffs' Second Amended Complaint, and
each of Plaintiffs' claims in this matter against all Defendants, are **DISMISSED WITH
PREJUDICE**, on the merits, and without costs to either party.

Dated: May 10, 2013

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge